

**BEFORE
THE ILLINOIS COMMERCE COMMISSION**

Z-TEL COMMUNICATIONS, INC.

Complainant,

vs.

ILLINOIS BELL TELEPHONE COMPANY,
d/b/a AMERITECH ILLINOIS,

Respondent.

Docket No. 02-0160

**Z-TEL COMMUNICATIONS, INC. RESPONSE TO AMERITECH ILLINOIS'
MOTION FOR CONFIRMATION**

Z-Tel Communications, Inc. ("Z-Tel"), by its attorneys O'Keefe, Ashenden, Lyons and Ward, pursuant to 80 Ill. Admin. Code Part 200.190 and ALJ Order, hereby files this Response to Ameritech Illinois' August 12, 2002 Motion for Confirmation ("Ameritech Motion"). The Commission must deny the Motion. Ameritech has asked this Commission to improperly prejudge issues that are pending in the ongoing rehearing phase of this proceeding wherein the parties are litigating whether Ameritech has provided Z-Tel with 836 Line Loss Notifications ("836 LLN") and whether the notices that are sent are at parity with the information Ameritech is providing its own retail and Winback groups. Z-Tel asserts that the evidence on rehearing will show that Ameritech is not in compliance with the requirements of the Commission's May 8, 20002 Order ("*Final Order*"). Should the Commission grant Ameritech's Motion, it will be prejudging the issues currently under litigation before the ALJ and defeating the very purpose of initiating the rehearing proceeding that Ameritech requested.

Not only is Ameritech's Motion premature in its timing, but it is also improper in its foundation. Throughout the Motion, Ameritech asserts that Staff did not dispute the merits of Ameritech's report and, as such, the emergency relief conditions are terminated. This position is untenable as Staff specifically recommended that the emergency relief guidelines established in the and its February 27, 2002 Emergency Order ("*Emergency Order*") and reiterated in the *Final Order* continue in effect until Ameritech provides six months of LLN without uncovering any new problems and without any of the old problems reemerging. Staff Report, p. 7. It is impossible for Staff to make such a recommendation without taking exception to Ameritech's report. In other words, Staff has disputed Ameritech's report.

Z-Tel respectfully requests the Commission to deny Ameritech's Motion and reiterate the obligation placed on Ameritech to continue to provide Z-Tel with emergency relief until such time as Ameritech's Winback group relies only upon the 836 LLN and the defects in the 836 systems have been cured. This is the exact determination reached by the Commission in its *Final Order* and nothing has changed since that determination that would warrant its rescission. The issues raised by Ameritech in its Motion will be addressed in the rehearing proceedings in this docket wherein the Commission can make a determination based upon a record complete with testimony and cross examination detailing whether Ameritech has provided line loss notification in a timely and accurate manner and in parity with the notifications provided to its retail and Winback operations.

I. BACKGROUND

On February 27, 2002, the Commission entered its *Emergency Order* granting Z-Tel's Request for Emergency Relief for Ameritech's failure to provide accurate and timely line loss notification data. In its *Emergency Order*, the Commission held that:

Ameritech should be precluded from using Line Loss Notifications to market Z-Tel's customers until 15 days after Ameritech loses that customer to Z-Tel as signaled by the EDI 865 Completion notice. We believe that this interim relief will help to level the competitive use of Line Loss Notifications for marketing purposes.

Emergency Order, p. 7. The Commission later entered an order modifying the term to 17 days rather than 15 days. All other terms of the Emergency Order continued in effect until the Commission entered its Final Order on the merits of the underlying complaint.

On May 8, 2002, after hearings and briefs, the Commission entered its *Final Order*. The Commission found Ameritech to have unreasonably impaired the speed, quality or efficiency of services used by Z-Tel through the provisioning of untimely and inaccurate 836 LLNs in violation of Section 13-514(2) 220 ILCS 5/13-514(2). *Final Order*, p. 28. The Commission also found that Ameritech's actions, or lack thereof, have had an adverse effect on the ability of Z-Tel to provide service to its customers in violation of 13-514(6). *Id.*

Similarly, Ameritech was found to have unreasonably provided Z-Tel inferior and discriminatory access to operations support systems ("OSS") in violation of Sections 13-514(9), 13-514(11) and 13-801 of the Act. *Id.* Importantly, the Commission determined that the emergency relief should continue in effect:

until such time as Ameritech's Winback marketing department relies solely on the 836 LLN **and the defects in the 836 LLN system have been cured**. (Ameritech

Winback may use the enhanced LLN once Z-Tel has the option to receive a similar notice).

Final Order, pp. 24-25.

The Commission further directed Ameritech to file a report with Staff verifying that the 836 LLNs problems are, in fact, resolved and being provided in a timely and accurate manner. *Id.* The Commission indicated that if there is no filing by Staff disputing Ameritech's report within 30 days from Ameritech's filing, then the emergency relief, including the 17 day restriction, will be ended. *Id.*

II. STAFF HAS ENTERED A REPORT DISPUTING AMERITECH'S ASSERTIONS.

As noted above, the Commission ordered Ameritech to file a report with the Commission verifying that the 836 LLNs problems are, in fact, resolved and being provided in a timely and accurate manner. *Final Order*, pp. 24-25. The Commission also held that if there is no filing by Staff disputing Ameritech's report within 30 days from Ameritech's filing, then the emergency relief, including the 17 day restriction, will be ended. *Id.*

The Commission specifically conditioned the lifting of the emergency relief requirements on Ameritech's showing that "Ameritech's Winback marketing department relies solely on the 836 LLN *and the defects in the 836 LLN system have been cured.*" *Final Order*, p. 24. In its August 3rd Report, Staff clearly disputed Ameritech's claim that the 836 LLN defects have been cured. "Staff is reluctant to give Ameritech's assertions much weight. From Staff's standpoint, the Company has, at various points in time, made representations that the Company's LLN process has been corrected, which

Staff later discovered to be inaccurate because additional LLN problems continued to reoccur.” Staff Report, p. 7.

Ameritech’s own motion acknowledges that it was not timely in fixing the problems associated with the 836 LLN, despite representations to that effect made by Ameritech. Ameritech’s Motion states that it had “expected that all 836 LLN issues would be resolved by May 3, 2002.” (Motion, p. 5.) However, Ameritech further admits that “in fact, it was not until June 3, 2002, that all such issues were ultimately resolved. *Id.*

At numerous times through its Motion, Ameritech attempts to confuse the Commission by claiming that Staff has not filed a Report disputing the Ameritech Report. Nothing could be further from the truth. While Z-Tel hesitates to speak on behalf of Staff, it is readily apparent that Staff does dispute the claims made in the Ameritech report, especially with regard to whether Ameritech has cured the 836 LLN problems. In point of fact, Staff has specifically recommended that the emergency relief procedures continue in effect until such time as Ameritech can show over time that the 836 LLN problems are solved. Staff Report, p. 7.

Despite the clear recommendation made by Staff, Ameritech has brazenly claimed that Staff does not dispute the Ameritech Report’s assertions that the LLN issues have been resolved or its supporting data showing that LLNs are being sent on a timely and accurate basis. *See, e.g.,* Ameritech Motion, p. 2, 8, 9-10, 13, 14. Simply put, such a claim cannot be read as consistent with Staff’s clear language in its Report and its recommendation that the emergency relief measures continue in effect. Such a

recommendation belies any argument by Ameritech that Staff does not dispute Ameritech's claims.

III. THE ISSUE OF WHETHER AMERITECH'S 836 LLN IS PROVIDED TO Z-TEL IN PARITY WITH THE 836 LLN PROVIDED TO AMERITECH'S WINBACK AND RETAIL UNITS IS AN ISSUE BEFORE THE COMMISSION IN THE REHEARING PHASE OF THIS PROCEEDING.

The essence of Ameritech's Motion is that it seeks a declaratory judgment from the Commission stating that Ameritech's retail and Winback groups rely solely on the 836 LLN process and that the defects in the 836 LLN system have been cured. According to Ameritech, once this determination is made, the emergency relief requirements are lifted.

However, as Staff noted in its Report disputing Ameritech's Report, the issue of whether the 836 LLN process has been removed of all defects is currently not clear. In fact, this issue is currently being litigated in the rehearing phase of this proceeding. Z-Tel asserts that the evidence on rehearing will show that Ameritech is not in compliance with the requirements of the *Final Order* and its Emergency Order and that Ameritech is still providing OSS information to Z-Tel that is not in parity with the OSS information Ameritech provides to its own retail operations. Should the Commission grant Ameritech's Motion, it would be prejudging at least some of the issues currently under litigation before the ALJ and defeating the very purpose of initiating the rehearing proceeding that Ameritech requested. Indeed, Ameritech's motion is nothing more than a collateral attack on its own rehearing proceeding.

The *Final Order* provided that "Z-Tel should, however, have the option of receiving more detailed OSS information about disconnected customers, *containing the*

same data fields as are currently sent to Ameritech's retail and Winback business units." *Final Order*, p. 19 (emphasis added.) The *Final Order* further held that "Once Ameritech has in place a system where Z-Tel can choose between the 836 LLN and/or a notice that is sent in the same timeframes *and contains as much information as that currently sent to Ameritech's retail and Winback business units*, then Ameritech Winback may use the enhanced LLN again." *Id.*, p. 19-20 (emphasis added.) Clearly, the Commission has required Ameritech to provide Z-Tel with the same back end systems and OSS on parity with what Ameritech provides its own retail and Winback business units.

Now, after the Commission has granted Ameritech's requested rehearing, Ameritech seeks to bypass the normal litigation route and have the Commission enter a preemptive declaratory judgment on the very issues it requested be reheard. Ameritech's own witness Beth Lawson acknowledges in her testimony on rehearing that one issue on rehearing is whether Ameritech has complied with the Commission's *Final Order* relating to Ameritech's use of the 836 LLN. *See*, Lawson Pre-filed Testimony on Rehearing, p. 3. In addition, Ms. Lawson states that "836 LLN provides more complete, accurate and timely line loss information than the [line loss report]." *Id.*, p. 7. Thus, Ameritech's own witness confirms that the issue of whether the 836 LLN is a functional report available on a parity basis to CLECs and in compliance with the Commission's Order is an issue to be addressed on rehearing.

The Commission should not prejudge these issues by granting the Motion with no record evidence or opportunity to cross-examine a witness.

IV. THERE IS NO EVIDENCE THAT AMERITECH IS PROVIDING THE 836 LLN TO Z-TEL IN PARITY WITH THE TIME AMERITECH PROVIDES THE 836 LLN TO ITS OWN RETAIL OPERATIONS.

Ameritech asserts that its Winback marketing group now relied upon the 836 LLN to trigger Winback marketing efforts. However, there is no assertion made by Ameritech, and certainly no proof, that Ameritech's delivery of the 836 LLN to Z-Tel is in parity with the 836 LLN that Ameritech delivers to its Winback Group. This fact alone should preclude the Commission from granting Ameritech's motion.

Ameritech commits at least two fatal flaws in its Report that prohibit the Commission from granting the Motion and allowing the emergency relief requirements from being lifted: (1) Ameritech relies almost exclusively on its internal analysis of a limited June 2002 sampling of the 836 LLN reports; and, (2) Ameritech's data does not provide any information as to whether Ameritech is providing LLNs in parity with its own retail and Winback operations.

a. Ameritech's June 2002 data paints an incomplete picture of the status of 836 LLN.

The Commission ordered Ameritech to fix *all* of its problems with the 836 LLN process. *Final Order*, p. 18. In support of its claim that it has fixed the 836 LLN process (and, thus, the emergency relief process should be lifted), Ameritech relies almost exclusively on its internal analysis of a sample of 836 LLN reports taken from June 2002. This data is heavily skewed in favor of Ameritech and fails to give a full picture of the 836 LLN data. For instance, Ameritech claims that only 2.6% of the LLNs given to CLECs were delivered after 24 hours. Ameritech Report, p. 7. Ameritech claims that this 2.6% error rate was due exclusively to service representative error. *Id.* What Ameritech does not tell the Commission is that this 2.6% error rate does not include any

LLNs that contain inaccurate information, and does not include LLN's which were required to be delivered, but were not. Ameritech's measurement includes only those 836 LLN's that were set, and measures only the timeliness, not the accuracy, of the 836 LLNs. This method of measuring "accuracy" in the delivery of the 836 LLNs was also the concerns of the Commission in its *Final Order* wherein it agreed with Staff that the performance measure must be redesigned to capture just these types of occurrences. *Final Order*, p. 24. Ameritech has failed to make such a redesign and is relying on the resulting skewed data in support of its claim that the emergency relief requirements should be lifted.

b. Ameritech has not shown any analysis of whether it is providing the LLNs to CLECs in parity with its own retail and Winback operations.

Ameritech's Report indicates that the Company began to rely upon the 836 LLN as of May 15, 2002. As such, Ameritech claims that it is now in compliance with the terms of the *Final Order* and the emergency relief requirements should be lifted. Unfortunately, Ameritech analysis stops well short of the requirements placed upon it by the Commission. Under the terms of the *Final Order*, Ameritech must provide the 836 LLN to Z-Tel in parity with Ameritech's delivery of the 836 LLN to Ameritech's retail and Winback operations. However, the Report fails to analyze this issue.

According to the *Final Order*, the Commission held that "Z-Tel should, however, have the option of receiving more detailed OSS information about disconnected customers, *containing the same data fields as are currently sent to Ameritech's retail and Winback business units.*" *Final Order*, p. 19 (emphasis added.) The *Final Order* further held that "Once Ameritech has in place a system where Z-Tel can choose between the 836 LLN and/or a notice that is sent in the same timeframes and contains as much

information as that currently sent to *Ameritech's retail and Winback* business units, then Ameritech Winback may use the enhanced LLN again.” *Id.*

Initially, Ameritech claims it has provided “factual substantiation that 836 LLNs were being sent on a timely and accurate basis”. Ameritech Report, p. 6. However, the data Ameritech made available provides absolutely no indication that the LLN provided to Z-Tel is as timely or as accurate as the information provided to Ameritech’s retail and Winback groups. In other words, there is no indication that Ameritech is providing Z-Tel with information that is in parity with the information provided to Ameritech’s retail and Winback groups.

In reviewing this Motion, the Commission must keep in mind the basis for initially imposing the emergency relief: Ameritech was using its databases to provide itself superior and more timely line loss information in order to gain a competitive advantage over Z-Tel and other CLECs. Now, in an attempt to have the best of both worlds, Ameritech is seeking to rid itself of the emergency relief requirements, while still not providing any information related to the manner and quality it provides itself LLNs. Again, this issue is currently queued up in the rehearing phase of this proceeding. The Commission should not prejudge the matter, but, rather, should allow the parties to develop a full and complete record upon which the Commission may make a knowledgeable decision.

Ameritech’s report to Staff indicates that Ameritech has proposed a new performance measure (MI 13) to measure the timeliness and accuracy of 836 LLNs. Ameritech further indicated it has proposed an additional performance measure (MI 13.1) to address the extent of delay for those LLNs that are sent more than one day after the

loss. However, neither of these proposals sufficiently measures Ameritech's performance of 836 LLNs for at least two reasons.

First, Z-Tel would point out to the Commission that Staff notes in its Report disputing Ameritech's Report that it has opposed from the beginning of the performance measure review process the very same performance measures proposed by Ameritech herein. That notwithstanding, Ameritech still relies on these disputed performance measurements in support of its Motion.

Further, Ameritech's proposed performance measurements still do not reveal whether Ameritech has fixed the 836 LLN problems. The measurements still do not address those instances where Ameritech fails to deliver any 836 LLN to the CLEC, which is one of the problems raised by Staff in its testimony during the initial phase of this docket. The Commission agreed with Staff in its *Final Order* wherein it held that the performance measures must be redesigned to address the problems raised by Staff. *Final Order*, p. 24. Z-Tel demonstrated how Ameritech failed on a number of occasions to provide any notice to Z-Tel that it had lost a customer or had delayed the notice for more than six days. *See, e.g.*, Reith Direct Testimony, p. 9. This type of situation is not addressed in Ameritech's proposed performance measurements. Thus, as Staff has recommended, until Ameritech can demonstrate that it has fixed this problem on a consistent basis, the emergency relief requirements should remain in effect.

V. AMERITECH IS STILL NOT IN COMPLIANCE WITH SEVERAL OTHER TERMS OF THE *FINAL ORDER*.

As demonstrated, by granting this Motion, the Commission would be inappropriately prejudging issues currently pending in the rehearing proceeding.

For instance, the *Final Order* confirms Ameritech's willingness and offer to conduct a reconciliation of the UNE charges assessed against Z-Tel for customers that have migrated off of Z-Tel's network. Despite repeated attempts by Z-Tel to initiate such a reconciliation, Ameritech has made no effort to conduct such activity.

Further, the Commission required Ameritech to submit a notice to any customers that are potentially affected by Ameritech's double-billing because of its failure to provide timely and accurate LLNs. *Final Order*, p. 20. The Commission adopted the following recommendations, *inter alia*, with respect to the issue of issuing customer notifications: 1) Ameritech is required to send a notice advising Ameritech customers that wrongful billing by Z-Tel may have been caused by Ameritech's failure to timely advise Z-Tel that the customer switched local service; 2) such notification should be targeted to potentially affected customers, rather than all of Ameritech's customers; and, 3) this notice remedy is granted primarily on a going forward basis, unless previous customer information is available, and end at such time as the line loss notification issue is resolved. *Final Order*, p. 21. The Commission held that Ameritech was to compile a listing of potentially affected customers to whom notice should be delivered. To date, some three months after the Commission entered its order, Z-Tel is unaware of any such mailing (or even a list compilation) being undertaken.

Any order by the Commission on Ameritech's Motion should in no way imply that Ameritech has complied with the terms of the Commission's Order.

CONCLUSION

The Motion filed by Ameritech is premature and unjustified. It is clear that Staff has disputed Ameritech's Report. As such, the emergency relief requirements must


continue in effect until such time as Ameritech can demonstrate over time that Ameritech's retail and Winback group relies only upon the 836 LLN "and the defects in the 836 systems have been cured." Final Order, p. 24. This is the exact determination reached by the Commission in its *Final Order* and nothing has changed since that determination that would warrant its rescission.

Also, the issues raised by Ameritech in its Motion will be addressed in the rehearing proceedings in this docket wherein the Commission can make a determination based upon a record complete with testimony and cross examination detailing whether Ameritech has provided line loss notification in parity with the notifications provided to its retail and Winback operations.

WHEREFORE, Z-Tel respectfully requests this Commission deny Ameritech's Motion for Confirmation.

Respectfully submitted,

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